

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMEAKA L. ELLIS,
Petitioner,

v.

KOEHEN,
Respondent.

Case No. [14-cv-05579-JCS](#) (PR)
CASE NO. 14-5589 JCS (PR)
CASE NO. 14-5590 JCS (PR)
CASE NO. 14-5606 JCS (PR)
CASE NO. 14-5607 JCS (PR)

**AMENDED ORDER DISMISSING
PETITION WITH LEAVE TO
AMEND**

INTRODUCTION

Petitioner seeks federal habeas relief from his state convictions.¹ The petitions for such relief are now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

Petitioner filed five petitions, each challenging a single conviction, though all convictions resulted from the same trial. Consequently, the petition in No. 14-5579 will be dismissed with leave to amend. He shall file an amended petition in No. 14-5579 in which

¹ Petitioner consented to magistrate judge jurisdiction in each action. The magistrate judge, then, has jurisdiction to issue this order, even though respondents have not been served or consented to magistrate judge jurisdiction. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss prison inmate's action under 42 U.S.C. § 1983 as frivolous without consent of defendants because defendants had not been served yet and therefore were not parties).

all convictions are included. The other petitions will be dismissed without prejudice.

BACKGROUND

In 2011, an Alameda Superior Court jury convicted petitioner of burglary and various sexual crimes against a child. Also, the jury found true an allegation that the burglary was committed while a person was present in the house. Petitioner received a sentence of 17 years and four months in state prison.

DISCUSSION

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

As noted above, petitioner filed five petitions. By this Order, the Court requires that all of petitioner’s claims arising out of all of the convictions that he challenging in these five petitions be included in a single petition. The petition in 14-5579 is DISMISSED with leave to amend. On or before June 1, 2015, petitioner shall file an amended petition in No. 14-5579 in which he shall include **all** claims and all the convictions he is challenging. The amended petition must include the caption and civil case number used in this order (14-5579 JCS (PR)) and the words FIRST AMENDED PETITION on the first page. Because an amended petition completely replaces the previous petition, petitioner must include in his amended petition **all** the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the prior petition by reference. Failure to file an amended petition in accordance with this order will result in dismissal of this action without further notice to petitioner.

Petitioner's application (Docket No. 2) to proceed *in forma pauperis* ("IFP") is GRANTED. His motion for the appointment of counsel (Docket No. 3) is DENIED without prejudice. He may refile this motion when he files his amended petition.

The petitions filed in Nos. 14-5589, 14-5590, 14-5606, 14-5607 are DISMISSED without prejudice. The applications to proceed IFP in each action are GRANTED. The motions for the appointment of counsel filed in these actions are DENIED.

The Clerk shall terminate all pending motions and close the files in Nos. 14-5589, 14-5590, 14-5606, 14-5607.

IT IS SO ORDERED.

Dated: April 27, 2015



JOSEPH C. SPERO
Chief United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMEAKA L. ELLIS,
Plaintiff,

v.

KOEHEN,
Defendant.

Case No. [14-cv-05579-JCS](#)

**AMENDED
CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/27/2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Demeaka L. Ellis ID: AL4772
Florence Correctional Center
1100 Bowling Road
P.O. Box 6900
Florence, AZ 85132

Dated: 4/27/2015

Richard W. Wieking
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO

United States District Court
Northern District of California